

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

PART 126  
SMOKING IN PUBLIC PLACES

**333.12601 Definitions.**

Sec. 12601. (1) As used in this part:

(a) "Casino" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202. Casino does not include a casino operated under the Indian gaming regulatory act, 25 USC 2701 to 2721.

(b) "Child caring institution" and "child care center" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) "Cigar" means any roll of tobacco weighing 3 or more pounds per 1,000, which roll has a wrapper or cover consisting only of tobacco.

(d) "Cigar bar" means an establishment or area within an establishment that is open to the public and is designated for the smoking of cigars, purchased on the premises or elsewhere.

(e) "County medical care facility" means that term as defined in section 20104.

(f) "Educational facility" means a building owned, leased, or under the control of a public or private school system, college, or university.

(g) "Food service establishment" means a food service establishment as defined in section 12905.

(h) "Health facility" means a health facility or agency licensed under article 17, except a home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit.

(i) "Home for the aged" means that term as defined in section 20106.

(j) "Hospice" means that term as defined in section 20106.

(k) "Hospital long-term care unit" means that term as defined in section 20106.

(l) "Meeting" means a meeting as defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262.

(m) "Motor vehicle" means that term as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

(n) "Nursing home" means that term as defined in section 20109.

(o) "Place of employment" means an enclosed indoor area that contains 1 or more work areas for 1 or more persons employed by a public or private employer. Place of employment does not include any of the following:

(i) A structure used primarily as the residence of the owner or lessee that is also used as an office for the owner or lessee and for no other employees.

(ii) A food service establishment that is subject to section 12905.

(iii) A motor vehicle.

(p) "Public body" means a public body as defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262.

(q) "Public place", except as otherwise provided in subsection (2), means any of the following:

(i) An enclosed, indoor area owned or operated by a state or local governmental agency and used by the general public or serving as a meeting place for a public body, including an office, educational facility, home for the aged, nursing home, county medical care facility, hospice, hospital long-term care unit, auditorium, arena, meeting room, or public conveyance.

(ii) An enclosed, indoor area that is not owned or operated by a state or local governmental agency, is used by the general public, and is any of the following:

(A) An educational facility.

(B) A home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit.

(C) An auditorium.

(D) An arena.

(E) A theater.

(F) A museum.

(G) A concert hall.

(H) Any other facility during the period of its use for a performance or exhibit of the arts.

(iii) Unless otherwise exempt under this part, a place of employment.

(r) "Smoking" or "smoke" means the burning of a lighted cigar, cigarette, pipe, or any other matter or

substance that contains a tobacco product.

(s) "Smoking paraphernalia" means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking.

(t) "Tobacco product" means a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and cigars.

(u) "Tobacco specialty retail store" means an establishment in which the primary purpose is the retail sale of tobacco products and smoking paraphernalia, and in which the sale of other products is incidental. Tobacco specialty retail store does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

(v) "Work area" means a site within a place of employment at which 1 or more employees perform services for an employer.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles of this code.

**History:** Add. 1986, Act 198, Eff. Jan. 1, 1987;—Am. 1988, Act 294, Eff. Oct. 1, 1988;—Am. 1988, Act 296, Eff. Mar. 30, 1989;—Am. 1988, Act 315, Eff. Mar. 30, 1989;—Am. 2009, Act 188, Eff. May 1, 2010.

**Compiler's note:** For transfer of certain powers and duties of the center for health promotion and chronic disease prevention from the department of public health to the director of the department of community health, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

**Popular name:** Act 368

### **333.12603 Smoking in public place or at meeting of public body prohibited; duties of owner, operator, manager, or person having control of public place, food establishment, or casino; good faith effort to prohibit smoking; affirmative defense; affidavit; section referred to as "Dr. Ron Davis Law."**

Sec. 12603. (1) An individual shall not smoke in a public place or at a meeting of a public body, and a state or local governmental agency or the person who owns, operates, manages, or is in control of a public place shall make a reasonable effort to prohibit individuals from smoking in a public place.

(2) The owner, operator, manager, or person having control of a public place, a food service establishment, or a casino subject to section 12606b shall do all of the following:

(a) Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to and in every building or other area where smoking is prohibited under this act.

(b) Remove all ashtrays and other smoking paraphernalia from anywhere smoking is prohibited under this act.

(c) Inform individuals smoking in violation of this act that they are in violation of state law and subject to penalties.

(d) If applicable, refuse to serve an individual smoking in violation of this act.

(e) Ask an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave the public place, food service establishment, or nonsmoking area of the casino.

(3) The owner, operator, manager, or person in control of a hotel, motel, or other lodging facility shall comply with subsection (2) and section 12606. It is an affirmative defense to a prosecution or civil or administrative action for a violation of this section that the owner, operator, manager, or person in control of a hotel, motel, or other lodging facility where smoking is prohibited under this section made a good faith effort to prohibit smoking by complying with subsection (2). To assert the affirmative defense under this subsection, the owner, operator, manager, or person shall file a sworn affidavit setting forth his or her efforts to prohibit smoking and his or her actions of compliance with subsection (2).

(4) This section may be referred to as the "Dr. Ron Davis Law".

**History:** Add. 1986, Act 198, Eff. Jan. 1, 1987;—Am. 1988, Act 296, Eff. Mar. 30, 1989;—Am. 1993, Act 217, Eff. Apr. 1, 1994;—Am. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12604 Smoking in a child caring institution or child care center or on the real property under control of institution or center; violation; penalties.**

Sec. 12604. (1) An individual shall not smoke in a child caring institution or child care center or on real property that is under the control of a child caring institution or a child care center and upon which the child caring institution or child care center is located, including other related buildings.

(2) An individual who violates this section is subject to all the penalties described in section 15 of Act No.

116 of the Public Acts of 1973, being section 722.125 of the Michigan Compiled Laws, except imprisonment.

**History:** Add. 1988, Act 294, Eff. Oct. 1, 1988;—Am. 1991, Act 178, Eff. June 21, 1992;—Am. 1993, Act 217, Eff. Apr. 1, 1994.

**Popular name:** Act 368

### **333.12604a, 333.12605 Repealed. 2009, Act 188, Eff. May 1, 2010.**

**Compiler's note:** The repealed sections pertained to prohibitions against smoking in private practice of health facility and designation of smoking areas.

### **333.12606 Retaliatory or adverse personnel action against employee or applicant prohibited.**

Sec. 12606. An employer or a food service establishment shall not take any retaliatory or adverse personnel action against an employee or applicant for employment on the basis of the individual's exercise of or attempt to exercise his or her rights under this part with respect to place of employment or part 129 with respect to food service establishments.

**History:** Add. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12606a Cigar bar or tobacco specialty retail store in existence on effective date of section; exemption from smoking prohibition; affidavit; request for additional information; failure to file affidavit.**

Sec. 12606a. (1) A cigar bar in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises. To qualify for the exemption under this section, the person who owns or operates a cigar bar shall file an affidavit with the department on or before the expiration of 30 days after the effective date of this section and on January 31 of each year after the effective date of this section. The affidavit shall be signed by the owner or operator of the cigar bar and shall certify that the cigar bar was in existence on the effective date of this section and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding the effective date of this section, the cigar bar generated 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.

(b) For each calendar year after the calendar year in which the first affidavit is filed under this subsection, the cigar bar generates 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.

(c) The cigar bar is located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited under this part or part 129 and where smoke does not infiltrate into those nonsmoking areas. As used in this subdivision, "physically separated" means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to ceiling.

(d) The cigar bar has installed on its premises an on-site humidor.

(e) The cigar bar prohibits entry to a person under the age of 18 during the time the cigar bar is open for business.

(f) The cigar bar allows only the smoking of cigars on the premises that retail for over \$1.00 per cigar.

(g) The cigar bar prohibits the smoking of all other tobacco products.

(2) A tobacco specialty retail store in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises. To qualify for the exemption under this section, the person who owns or operates a tobacco specialty retail store shall file an affidavit with the department on or before the expiration of 30 days after the effective date of this section and on January 31 of each year after the effective date of this section. The affidavit shall be signed by the owner or operator of the tobacco specialty retail store and shall certify that the tobacco specialty retail store was in existence on the effective date of this section and that it meets all of the following requirements:

(a) In the 30-day period immediately preceding the filing of the effective date of this section, the tobacco specialty retail store generated 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.

(b) For each calendar year after the calendar year in which the first affidavit is filed under this subsection, the tobacco specialty retail store generated 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.

(c) The tobacco specialty retail store is located on premises that are physically separated from any areas of the same or adjacent establishments in which smoking is prohibited under this part or part 129 and where smoke does not infiltrate into those nonsmoking areas. As used in this subdivision, "physically separated"

means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to ceiling.

(d) The tobacco specialty retail store prohibits entry to a person under the age of 18 during the time the tobacco specialty retail store is open for business.

(3) The department may request additional information from a cigar bar or tobacco specialty retail store to verify that the cigar bar or tobacco specialty retail store meets the requirements of this section. A cigar bar or tobacco specialty retail store shall comply with requests from the department under this section.

(4) Except as otherwise provided in this subsection, a cigar bar or tobacco specialty retail store that does not meet the requirements of this section or violates this section is not exempt from the smoking prohibition of section 12603 and shall immediately prohibit smoking on its premises. A cigar bar or tobacco specialty retail store that meets all of the requirements of this section other than filing the affidavit as required under subsection (1) or (2), retains its exemption and may continue to allow smoking during the period beginning on the date the affidavit is due and ending on the expiration of 21 days after that date. However, if the affidavit remains unfiled after the 21-day grace period, the cigar bar or tobacco specialty retail store is not exempt from the smoking prohibition of section 12603 and shall immediately prohibit smoking on its premises. A cigar bar or tobacco specialty retail store that loses its exemption under this subsection is not exempt from the smoking prohibition of section 12603, shall immediately prohibit smoking on its premises, and may only again qualify for the exemption under this section by filing an affidavit and meeting all of the requirements of subsection (1) or (2), as applicable.

**History:** Add. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12606b Casino in existence on effective date of section; "gaming area" defined.**

Sec. 12606b. (1) A casino that is in existence on the effective date of this section may allow smoking in the gaming area of the casino. Section 12603 applies to a casino that is not in existence on the effective date of this section and to all areas of a casino not part of the gaming area. A food service establishment in or part of a casino is subject to section 12905. However, any part of the gaming area where food and beverage is taken by patrons for immediate consumption is not considered a food service establishment under this part or part 129.

(2) A casino that is in existence on the effective date of this section shall comply with section 12603(2) for all areas of the casino not part of the gaming area. Section 12606 does not apply with respect to employees working in the gaming area of a casino where smoking is allowed under this section. However, section 12606 does apply with respect to employees working in areas other than the gaming area of a casino.

(3) As used in this section, "gaming area" means that term as defined in R 432.1103 of the Michigan administrative code.

**History:** Add. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12607 Repealed. 2009, Act 188, Eff. May 1, 2010.**

**Compiler's note:** The repealed section pertained to duties of state or local governments to prevent smoking.

### **333.12609 Rules.**

Sec. 12609. The department may promulgate rules to implement this part.

**History:** Add. 1986, Act 198, Eff. Jan. 1, 1987.

**Popular name:** Act 368

### **333.12610 Rules prohibited.**

Sec. 12610. Notwithstanding section 12609 or any other provision of this act to the contrary, the department shall not promulgate rules to implement or administer the provisions of this part that were added by the amendatory act that added this section.

**History:** Add. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12611 Violation; compliance; civil fine; perjury.**

Sec. 12611. A person or state or local governmental agency that violates this part or part 129 shall be directed to comply with this part and is subject to a civil fine of not more than \$100.00 for a first violation and not more than \$500.00 for a second or subsequent violation. A person who makes a false statement in an affidavit under this part is guilty of perjury under section 423 of the Michigan penal code, 1931 PA 328, MCL

750.423.

**History:** Add. 1986, Act 198, Eff. Jan. 1, 1987;—Am. 1988, Act 294, Eff. Oct. 1, 1988;—Am. 1988, Act 296, Eff. Mar. 30, 1989;—Am. 1988, Act 315, Eff. Mar. 30, 1989;—Am. 1993, Act 217, Eff. Apr. 1, 1994;—Am. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12613 Enforcement; civil fine; injunctive relief; remedies independent and cumulative.**

Sec. 12613. (1) Subject to subsection (2), the department shall enforce this part and part 129 and any rules promulgated under this part pursuant to sections 2262(2) and 2263. In addition to the civil fine authorized under section 12611, the department may enforce this part and any rules promulgated under this part through an action commenced pursuant to section 2255 or any other appropriate action authorized by law.

(2) Pursuant to section 2235, the department may authorize a local health department to enforce this part and part 129 and any rules promulgated under this part. A local health department authorized to enforce this part and part 129 and any rules promulgated under this part shall enforce this part and part 129 and any rules promulgated under this part pursuant to sections 2461(2) and 2462. In addition to the civil fine authorized under section 12611, a local health department may enforce this part and part 129 and any rules promulgated under this part through an action commenced pursuant to section 2465 or any other appropriate action authorized by law.

(3) In addition to any other enforcement action authorized by law, a person alleging a violation of this part may bring a civil action for appropriate injunctive relief, if the person has used the public place, child caring institution, or child care center within 60 days before the civil action is filed.

(4) The remedies under this part are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

**History:** Add. 1986, Act 198, Eff. Jan. 1, 1987;—Am. 1988, Act 294, Eff. Oct. 1, 1988;—Am. 1988, Act 296, Eff. Mar. 30, 1989;—Am. 1988, Act 315, Eff. Mar. 30, 1989;—Am. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12614 Reports.**

Sec. 12614. (1) The director shall report biennially to the legislature on the effect and enforcement of this part and part 129. The report shall include, at a minimum, compliance with sections 12603 and 12905.

(2) Upon request of the department, the director of the department of management and budget annually shall report to the department, at a minimum, a list of each public place owned or operated by the state and its compliance with section 12603.

**History:** Add. 1988, Act 296, Eff. Mar. 30, 1989;—Am. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368

### **333.12615 Repealed. 2009, Act 188, Eff. May 1, 2010.**

**Compiler's note:** The repealed section pertained to smoking of tobacco in nursing home or food service establishment.

### **333.12616 Short title.**

Sec. 12616. This part shall be known and may be cited as the “Michigan clean indoor air act”.

**History:** Add. 1988, Act 296, Eff. Mar. 30, 1989.

**Popular name:** Act 368

### **333.12617 Repealed. 2009, Act 188, Eff. May 1, 2010.**

**Compiler's note:** The repealed section pertained to effective date of part.